

EXHIBIT 2

Docket No.: 564-017TM

TRADEMARK LAW OFFICE 111

Serial Number: 78/405596

Mark: PRETZEL CRISPS



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

The Snack Factory, Inc.

Serial No.: 78/405,596

Filed: April 16, 2004

Mark: PRETZEL CRISPS

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Law Office 111

Attorney: Tracy Whittaker-Brown

RESPONSE

BOX RESPONSES – FEE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, Virginia 22313-1451

Sir:

This is in Response to the Official Action dated November 15, 2004, regarding the above-identified application.

AMENDMENT

Applicant amends its identification of goods in its entirety as follows:

Pretzel crackers in Class 30

AMENDMENT TO ALLEGE USE

Applicant requests registration of the above-identified trademark in the United States

Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15



05-11-2005

U.S. Patent & TMO/TM Mail Rpt Dt. #66

U.S.C. § 1051 et. seq. as amended). One specimen per class showing the mark as used in commerce is submitted with this Allegation of Use.

Applicant is using the mark in commerce on packaging for pretzel crackers.

The first use date anywhere of the mark on the goods is at least as early as October 2004 and the first use date in U.S. regulated commerce of the mark on the goods is at least as early as October 2004. The mark is being used by applying it to the goods, on labels and/or packaging for the product, and by other methods consistent with practices in the industry.

A credit card authorization form filled out for payment of the \$100 fee associated with this amendment to allege use for one class is attached herewith. In the event there is any deficiency in this fee the Commission is hereby authorized to charge the firm's Deposit Account No. 07-1337 for any such deficiency.

DECLARATION

The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he is properly authorized to execute this Allegation of Use on behalf of the Applicant; he believes the Applicant to be the owner of the trademark sought to be registered; the trademark is now in use in commerce; and that all statements made of his own knowledge are true and that all statements made on information and belief are believed to be true.

Disclaimer

Applicant disclaims the term "PRETZEL" apart from the mark as a whole.

REMARKS

The Examining Trademark Attorney has initially refused registration on the grounds that the applied for mark is merely descriptive under Section 2(e). Applicant has amended its identification of goods from "pretzels" to "pretzel crackers" to more accurately identify the goods at issue which are not merely pretzels, but rather pretzels which are pressed into crackers with the cracker maintaining a unique pretzel look of three holes but without a pretzel's thickness.

Applicant submits that the term PRETZEL CRISPS is suggestive when viewed in light of the unique goods pretzel crackers. The unique crackers at issue are not potato chips, or crumbly dessert crisps like an "apple crisp." Applicant submits that a consumer would not immediately comprehend that a product branded as PRETZEL CRISPS is a unique spreadable pretzel cracker without some thought process. This is indicative of a suggestive mark. Hence, Applicant submits the mark is registrable on the Principle Register in view of the disclaimer of the term "pretzel."

Amendment to the Supplemental Register in the Alternative

Applicant submits that the coined term PRETZEL CRISPS is unique and distinctive for a unique new product, pretzel crackers, which are the first of its kind. Nevertheless, the question of whether or not the term PRETZEL CRISPS is distinctive, descriptive, or merely descriptive is a mixed question of law and fact. In view of the relatively new introduction of this unique product Applicant can understand reasonable minds may differ over the legal issues. Without conceding Applicant's position maintaining the applied-for mark is distinctive, in the event the Examining Attorney remains steadfast that the mark as applied is descriptive, Applicant submits that the

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mark is nevertheless capable of distinctiveness and in the alternative therefore hereby amends its application to the Supplemental Register. Passage to Supplemental Registration is respectfully requested in view of the amendment to allege use filed concurrently herein.

Applicant has addressed all the issues raised in the first Office Action. The Examining Trademark Attorney has searched the office records and not found a confusingly similar registered or pending mark which would bar registration. In view of the amendments herein, Applicant submits that this application is now in condition for publication. Prompt passage to publication is solicited if Principal registration is deemed applicable. Alternatively, passage for registration on the Supplemental Register is alternatively requested.

Any questions may be addressed to the undersigned.

Respectfully submitted,

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Date: May 11, 2005

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the
snack factoryTM

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ALL NATURAL!
TRANS FAT FREE!

Pretzel CrispsTM

flat, crispy
pretzel crackers

BRANDTM

The World's First
SPREADABLE
PRETZEL CRACKER



NET WT. 6 OZ (170g)

GARLIC

©
ARVE



78/405,596
Pretzel Crisps
 flat, crispy
 pretzel crackers
 BRAND



80-CT Shipper Display



12-ct



8 oz sample

World's First Spreadable Pretzel Cracker

Ultra Thin, All Natural, Trans Fat Free

Perfect for Salsas, Cheeses, Dips and Chili

Resealable, stand up pouch, 6 oz. - 12/case

Ideal for Entertaining and Snacking

(U) Pareve, GMO Free, No Cholesterol

**Available in three flavor varieties:
 Original, Garlic and Everything**

SAMPLING: We will provide one free 8 oz. sampling bag in each 12-ct case, 4-8 oz. bags in each 80-ct shipper

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